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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,533

11/28/2003

Walter Johannes Freybe

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09/08/2006

Walter J. Freybe
93 - 31406 Upper Maclure Road
Abbotsford, BC V2T 5L8
CANADA

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/724,533

Applicant(s)

FREYBE, WALTER JOHANNES

Examiner

Steven L. Weinstein

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1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/28/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claim 1 is objected to because it is not in proper USPTO form. Claim 1 contains multiple sentences. Each claim should be a single sentence, beginning with a capitol letter and ending in a period.

Claim 1 is rejected under 35USC112, 1st paragraph for being based on a non-enabling disclosure. Claim 1 recites that at least part of the process occurs without the use of preservatives. This phrasing, is at best, confusing in the specification. The reason the rejection states "at least part of the process", is because, as presently written, with its several sentences, it is not clear what the claim positively recites in regard to the method steps. As disclosed, it is stated that preservatives are not added. However, the specification discloses salt, sugar and acidulants, which are all used in the art for their preserving effect as well as their modification of flavor. For example, it is notoriously well known that adding acidulants to low acid food products reduces the ph of the product, thus allowing for reduced heating conditions. The claim and the specification are silent as to how much of these ingredients are added and to what degree they would contribute to preserving the food.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Quinet (5,114,733), in view of Demeulemeester et al (4,832,963), Cancarini (EP 553603),

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Juillard et al (WO 91/11108), Sakai et al, and McIntyre et al (4,741,911), further in view of Bauermann (4,191,787), Hahnet al (4,175,142), and Meaker (2,206,483).

In regard to claim 1, Quinet discloses a method of preserving a salad, without the addition of preservatives including mixing the basic ingredients which include agricultural products (e.g., vegetables) with a dressing (e.g., an oil emulsion), packaging the mixed ingredients in a package, pasteurizing the salad containing package, and rapidly cooling the pasteurized salad containing package. Claim 1 recites that the core temperature required to destroy bacteria must be determined ...which it is pasteurized. Note that this is not a positive step that the core temperature reaches a pasteurization temperature. However, even if the claim had positively recited this step, Quinet discloses a core temperature and time (e.g. 70-80C for 10-30 minutes) within applicant's disclosed (but unclaimed) range. Claim 1 recites that the package is a plastic bag whereas Quinet discloses a plastic container. As evidenced by Demeulemeester et al, Cancarini, Juillard et al, Sakai et al, and McIntyre et al, it was well established to pasteurize or sterilize foods in bags. In fact, the art taken as a whole teaches one can use bags or containers as desired. To modify Quinet and substitute one conventional package for another conventional package would therefore have been obvious. It is noted that the composition of Quinet undergoes vacuum. It is not seen that claim 1 necessarily excludes an evacuation step since this could be part of the recited mixing step. In any case, vacuum treatment is used in the art to eliminate air, which contains oxygen, which if present in the food would hasten oxidation. To eliminate the step and its function, if one were willing to absorb the art recognized disadvantage of not vacuum

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treating would have been obvious. Of course, a vacuum treatment step also imparts longer life to the product as evidenced by Quinet's 3-6 month storage life versus applicant's claimed 60 days. It is also noted that the art taken as a whole discloses heat preserving methods that do not employ evacuation (e.g., Bauermann). Hahn et al and Meaker are relied on as further evidence of the conventionality of employing heating such as pasteurization for food products such as salads. In summary, applicant has combined several conventional method expedients in the art, employed them for their well known and intended function and achieved no new or unexpected result. In fact any food product subjected to pasteurizing temperatures without the addition of preservatives except salt, sugar and acidulants would have been expected to be preserved longer than the same product that has not been pasteurized.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER
9/8/06